

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 94-0640 CS
CONTROLLED SUBSTANCE EXCISE TAX
FOR TAX PERIOD: 06/26/94**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department=s official position concerning a specific issue.

ISSUES

I. Controlled Substance Excise Tax – Imposition

Authority: IC 6-7-3-5; IC 6-7-3-6; IC 6-7-3-13; IC 6-8.1-5-1; Bryant v. State, 660 N.E.2d 290 (Ind. 1995)

Taxpayer protests the imposition of the controlled substance excise tax.

II. Tax Administration – Penalty

Authority: IC 6-7-3-11

Taxpayer protests the imposition of a 100% penalty.

STATEMENT OF FACTS

Taxpayer was arrested after a search warrant was served on his residence on June 26, 1994. The Department assessed the controlled substance excise tax against taxpayer on July 1, 1994. Taxpayer protested the assessment. Additional relevant facts will be presented below, as necessary.

I. Controlled Substance Excise Tax – Imposition

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DISCUSSION

Indiana Code Section 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed, or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Pursuant to Indiana Code Section 6-7-3-6:

AThe amount of the controlled substance excise tax is determined by:

- (1) the weight of the controlled substance. . ≡

Taxpayer was arrested and the controlled substance excise tax was assessed based on 123.9 grams of marijuana and 34.4 grams of amphetamine.

Taxpayer protested the assessment on several grounds. The taxpayer first argued the jeopardy assessment did not describe the nature of the tax. However, the Department finds the assessment was clearly labeled as a controlled substance excise tax assessment and described the weights of the schedules of drugs assessed and the rates of tax, including penalty.

Taxpayer also argued he did not receive a timely administrative hearing. Taxpayer protested the tax and requested a hearing on August 16, 1994. The Department proceeded as efficiently and timely as possible due to the presence of several CSET cases pending in Indiana courts at the time. Pursuant to IC 6-8.1-5-1, “the department shall ... set the hearing at the department’s earliest convenient time....” The Department finds the taxpayer was not denied proper process at the administrative hearing stage.

Finally, taxpayer argued the controlled substance excise tax assessment constituted a double jeopardy. Bryant v. State, 660 N.E.2d 290 (Ind. 1995), is the Indiana Supreme Court’s latest discussion of the controlled substance excise tax and the effect of double jeopardy. In Bryant, the Court found a civil tax could constitute a jeopardy, and thus, be limited by double jeopardy restrictions. However, the Court also noted the date a tax jeopardy was assessed as opposed to a criminal jeopardy. Taxpayer stated he was criminally prosecuted for the same circumstances surrounding the tax assessment. Taxpayer argued the tax violated his right to not be placed in a second jeopardy. The Bryant Court answered the question of which jeopardy was barred as the second jeopardy. Because taxpayer was assessed prior to his criminal prosecution, the tax assessment came first in time and remains valid.

Taxpayer argued there needed to be an administrative final determination for the jeopardy to attach
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but according to IC 6-7-3-13, “An assessment for tax due under this chapter is considered a jeopardy assessment....” The Department will strictly apply and enforce the laws as written by the Indiana legislature.

FINDING

Taxpayer’s protest is denied.

II. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the imposition of a 100% penalty. Pursuant to IC 6-7-3-11, “A person may not deliver, possess, or manufacture a controlled substance subject to the tax under this chapter unless the tax has been paid. A person who fails or refuses to pay the tax imposed by this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax.”

The Department, again, will strictly enforce this statutory provision. Taxpayer did not pay the tax prior to possessing the controlled substances. As such, taxpayer was subject to the penalty.

FINDING

Taxpayer’s protest is denied.